

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JAN P. HOLICK, JR., STEVEN MOFFITT, JUSTIN
MOFFITT, GURWINDER SINGH, and JASON
MACK,

Plaintiffs, on behalf of
themselves and all others
similarly situated,

Case No. 1:12-CV-584
(NAM/DRH)

NOTICE OF APPEAL

-against-

CELLULAR SALES OF NEW YORK, LLC, and
CELLULAR SALES OF KNOXVILLE, INC.,

Defendants.

PLEASE TAKE NOTICE that Jan P. Holick, Jr., Steven Moffitt, Justin Moffitt, Gurwinder Singh, Jason Mack, Timothy M. Pratt, and William Burrell, plaintiffs in the above-named case, hereby appeal to the United States Court of Appeals for the Second Circuit from the Memorandum-Decision and Order of the United State District Court for the North District of New York entered in this action on the 29th day of March, 2013 to the extent that it granted the motion to compel arbitration filed by defendant and ordered plaintiffs' complaint dismissed.

PLEASE TAKE FURTHER NOTICE that that Jan P. Holick, Jr., Steven Moffitt, Justin Moffitt, Gurwinder Singh, Jason Mack, Timothy M. Pratt, and William Burrell, plaintiffs in the above-named case, hereby appeal to the United States Court of Appeals for the Second Circuit from the Memorandum-Decision and Order of the United State District Court for the North District of New York entered in this action on the 29th day of March,

2013 to the extent that it denied plaintiffs' motion for conditional certification under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, as moot.

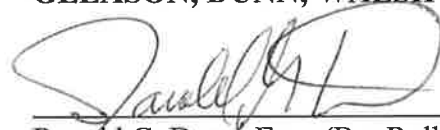
PLEASE TAKE FURTHER NOTICE that that Jan P. Holick, Jr., Steven Moffitt, Justin Moffitt, Gurwinder Singh, Jason Mack, Timothy M. Pratt, and William Burrell, plaintiffs in the above-named case, hereby appeal to the United States Court of Appeals for the Second Circuit from the Judgment of the United State District Court for the North District of New York to the extent that it dismissed plaintiffs' complaint without prejudice.

Dated: Albany, New York
April 8, 2013

Respectfully submitted,

GLEASON, DUNN, WALSH & O'SHEA

By:



Ronald G. Dunn, Esq. (Bar Roll No. 101553)
Attorneys for Plaintiffs
40 Beaver Street
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CLOSED

**U.S. District Court
Northern District of New York - Main Office (Syracuse) [LIVE - Version 5.1.1]
(Albany)
CIVIL DOCKET FOR CASE #: 1:12-cv-00584-NAM-CFH**

Holick et al v. Cellular Sales of New York, LLC et al
Assigned to: Judge Norman A. Mordue
Referred to: Magistrate Judge Christian F. Hummel
related Case: 1:12-cv-01754-NAM-RFT
Cause: 29:201 Fair Labor Standards Act

Date Filed: 04/04/2012
Date Terminated: 03/29/2013
Jury Demand: Plaintiff
Nature of Suit: 710 Labor: Fair
Standards
Jurisdiction: Federal Question

Plaintiff

Jan P. Holick, Jr.
*on behalf of themselves and all others
similarly situated*

represented by **Daniel A. Jacobs**
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Plaintiff

Steven Moffitt
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Ronald G. Dunn
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ATTORNEY TO BE NOTICED

Plaintiff

Justin Moffitt

represented by **Daniel A. Jacobs**

*on behalf of themselves and all others
similarly situated*

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LEAD ATTORNEY
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Ronald G. Dunn
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LEAD ATTORNEY
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Plaintiff

Gurwinder Singh
*on behalf of themselves and all others
similarly situated*

represented by **Daniel A. Jacobs**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ronald G. Dunn
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Jason Mack
*on behalf of themselves and all others
similarly situated*

represented by **Daniel A. Jacobs**
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LEAD ATTORNEY
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Ronald G. Dunn
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Plaintiff

Timothy M. Pratt

represented by **Daniel A. Jacobs**
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ATTORNEY TO BE NOTICED

Plaintiff

William Burrell

represented by **Daniel A. Jacobs**
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V.

Defendant

Cellular Sales of New York, LLC

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Defendant

Cellular Sales of Knoxville, Inc.

represented by **Charles L. Carbo , III**
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Joseph M. Dougherty
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ryan O. Cantrell
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/29/2013	<u>39</u>	JUDGMENT granting defts' motion to compel arbitration and dismissing the complaint without prejudice, pursuant to the <u>38</u> Memorandum-Decision & Order of the Honorable Norman A. Mordue. (see) (Entered: 03/29/2013)
03/29/2013	<u>38</u>	MEMORANDUM-DECISION & ORDER that defendants motion to dismiss (Dkt. #8) pursuant to Fed. R. Civ. P. 12 (b) (1) for lack of subject matter jurisdiction is DENIED; that defendants alternative motion (Dkt. # 8) to compel arbitration is GRANTED; that the complaint is dismissed without prejudice; that in light of the Courts determination to grant defendants motion to compel arbitration and dismiss the complaint, it is further ORDERED that defendant CSOKIs motion to dismiss for lack of personal jurisdiction (Dkt. #10) is DENIED as moot; that plaintiffs motion for conditional certification of a collective action under the FLSA (Dkt. #27) is DENIED as moot; and that the parties remaining pending motions, Dkts # 18 and #37 are DENIED as moot. Signed by Judge Norman A. Mordue on 3/28/2013. (see) (Entered: 03/29/2013)
12/03/2012	<u>37</u>	Letter Motion from Daniel A. Jacobs for William Burrell, Jan P. Holick, Jr, Jason Mack, Justin Moffitt, Steven Moffitt, Timothy M. Pratt, Gurwinder Singh requesting That this Court consider the Consent Order in Bolletino, et al. v. Cellular Sales of Knoxville submitted to Judge Mordue . (Attachments: # <u>1</u> Stipulation and Order in Bolletino v. Cellular Sales of Knoxville)(Jacobs, Daniel) (Entered: 12/03/2012)
11/02/2012	<u>36</u>	Letter Motion from Plaintiffs Counsel for William Burrell, Jan P. Holick, Jr, Jason Mack, Justin Moffitt, Steven Moffitt, Timothy M. Pratt, Gurwinder Singh requesting Seeking consideration of new legal authority submitted to Judge Mordue . (Attachments: # <u>1</u> Newbanks and Walton v. Cellular Sales of Knoxville, et al. (3:12-1420-CMC) Order Granting Plaintiffs' Request for Jurisdictional Discovery)(Jacobs, Daniel) (Entered: 11/02/2012)
11/02/2012	<u>35</u>	Letter Motion from Plaintiffs for William Burrell, Jan P. Holick, Jr, Jason Mack, Justin Moffitt, Steven Moffitt, Timothy M. Pratt, Gurwinder Singh requesting Seeking Consideration of new legal authority in pending motion to dismiss submitted to Judge Mordue . (Attachments: # <u>1</u> Newbanks and Walton v. Cellular Sales of Knoxville, et al.; Order Granting Motion to Amend Complaint and Denying Motion to Compel Arbitration)(Jacobs, Daniel) (Entered: 11/02/2012)
10/10/2012	<u>34</u>	CERTIFICATE OF SERVICE by William Burrell, Jan P. Holick, Jr, Jason Mack, Justin Moffitt, Steven Moffitt, Timothy M. Pratt, Gurwinder Singh re <u>33</u> Reply to Response to Motion, (Jacobs, Daniel) (Entered: 10/10/2012)
10/09/2012	<u>33</u>	REPLY to Response to Motion re <u>27</u> MOTION for Conditional Certification of FLSA Collective Action and Equitable Tolling filed by William Burrell, Jan P. Holick, Jr, Jason Mack, Justin Moffitt, Steven Moffitt, Timothy M. Pratt, Gurwinder Singh. (Attachments: # <u>1</u> Appendix A to Reply Brief, # <u>2</u> Affirmation with Exhibit AA)(Jacobs, Daniel) (Entered: 10/09/2012)

10/02/2012	<u>32</u>	Letter Motion from Daniel A. Jacobs, Esq. for William Burrell, Jan P. Holick, Jr, Jason Mack, Justin Moffitt, Steven Moffitt, Timothy M. Pratt, Gurwinder Singh requesting Leave pursuant to Local Rule 7.1(b)(2) to submit a Reply in Response to Defendants' Opposition to previously filed Motion submitted to Judge Mordue . (Jacobs, Daniel) (Entered: 10/02/2012)
10/01/2012	<u>31</u>	MEMORANDUM OF LAW re <u>27</u> Motion for Miscellaneous/Other Relief,,,, filed by Cellular Sales of Knoxville, Inc., Cellular Sales of New York, LLC. (Attachments: # <u>1</u> Exhibit(s) A, # <u>2</u> Exhibit(s) B, # <u>3</u> Exhibit(s) C, # <u>4</u> Exhibit (s) D, # <u>5</u> Exhibit(s) E, # <u>6</u> Exhibit(s) F, # <u>7</u> Exhibit(s) G, # <u>8</u> Exhibit(s) H, # <u>9</u> Unpublished Case, # <u>10</u> Unpublished Case, # <u>11</u> Unpublished Case, # <u>12</u> Unpublished Case, # <u>13</u> Unpublished Case, # <u>14</u> Unpublished Case, # <u>15</u> Unpublished Case, # <u>16</u> Unpublished Case, # <u>17</u> Unpublished Case)(Carbo, Charles) (Entered: 10/01/2012)
09/07/2012	<u>30</u>	REQUEST AND ORDER granting <u>28</u> Letter Request for extension of time to 10/1/12 for def't's to file their reponse to pltf's <u>27</u> Motion. Signed by Judge Norman A. Mordue on 9/7/12. (sfp,) (Entered: 09/07/2012)
09/04/2012	<u>29</u>	ORDER REASSIGNING CASE. Case reassigned to Magistrate Judge Christian F. Hummel for all further proceedings. Magistrate Judge David R. Homer no longer assigned to case. Signed by Chief Judge Gary L. Sharpe on 9/4/2012. (dpk) (Entered: 09/05/2012)
08/27/2012	<u>28</u>	LETTER REQUEST/MOTION for Extension of Time to File Response/Reply as to <u>27</u> MOTION for Conditional Certification of FLSA Collective Action and Equitable Tolling filed by Cellular Sales of Knoxville, Inc., Cellular Sales of New York, LLC. Motions referred to David R. Homer. (Dougherty, Joseph) Modified on 8/27/2012 (amt). (Entered: 08/27/2012)
08/24/2012	<u>27</u>	MOTION for Conditional Certification of FLSA Collective Action and Equitable Tolling Motion Hearing set for 10/3/2012 10:00 AM in Syracuse before Judge Norman A. Mordue Response to Motion due by 9/17/2012 filed by Jan P. Holick, Jr, Jason Mack, Justin Moffitt, Steven Moffitt, Gurwinder Singh. (Attachments: # <u>1</u> Affirmation of Daniel A. Jacobs, Esq. in Support of Motion, # <u>2</u> Exhibit(s) AA to Jacobs Affirmation, # <u>3</u> Exhibit(s) BB to Jacobs Affirmation, # <u>4</u> Exhibit(s) CC to Jacobs Affirmation, # <u>5</u> Exhibit(s) DD to Jacobs Affirmation, # <u>6</u> Declaration of Jan P. Holick, Jr. in Support of Motion, # <u>7</u> Exhibit(s) A-D to Holick Declaration, # <u>8</u> Exhibit(s) E-H to Holick Declaration, # <u>9</u> Declaration of Steven Moffitt in Support of Motion, # <u>10</u> Declaration of Justin Moffitt in Support of Motion, # <u>11</u> Declaration of Gurwinder Singh in Support of Motion, # <u>12</u> Declaration of Timothy M. Pratt in Support of Motion, # <u>13</u> Declaration of William Burrell in Support of Motion, # <u>14</u> Memorandum of Law in Support of Motion, # <u>15</u> Appendix to Memorandum of Law, # <u>16</u> Certificate of Service) Motions referred to David R. Homer. (Jacobs, Daniel) (Entered: 08/24/2012)
08/23/2012	<u>26</u>	NOTICE by William Burrell <i>Consent to Sue under FLSA</i> (Jacobs, Daniel) (Entered: 08/23/2012)
08/21/2012	<u>25</u>	NOTICE by Timothy M. Pratt <i>Consent to Sue under FLSA</i> (Jacobs, Daniel) (Entered: 08/21/2012)

08/01/2012	<u>24</u>	ORDER re Telephone Conference. ORDERED that plaintiffs' various requests for relief are DENIED except that it is noted that plaintiffs may move for provisional class certification whenever they deem it appropriate and such motion shall proceed before the assigned district court judge according to the normal motion practice in this District. (Motions terminated: <u>21</u> Letter Motion) Signed by Magistrate Judge David R. Homer on 7/31/2012. (dpk) (Entered: 08/01/2012)
07/26/2012	<u>23</u>	ORDER granting <u>19</u> Motion for Limited Admission Pro Hac Vice. Signed by Magistrate Judge David R. Homer on 7/20/2012. (dpk) (Entered: 07/26/2012)
07/20/2012	<u>22</u>	RESPONSE TO LETTER BRIEF filed by Cellular Sales of Knoxville, Inc., Cellular Sales of New York, LLC as to <u>21</u> Letter Request/Motion, filed by Jan P. Holick, Jr., Jason Mack, Gurwinder Singh, Justin Moffitt, Steven Moffitt . (Carbo, Charles) (Entered: 07/20/2012)
07/20/2012	<u>21</u>	Letter Motion from Daniel A. Jacobs, Esq. for Jan P. Holick, Jr, Jason Mack, Justin Moffitt, Steven Moffitt, Gurwinder Singh requesting Reconsideration of Adjournment of Rule 16 Conference submitted to Judge Homer . (Jacobs, Daniel) (Entered: 07/20/2012)
07/19/2012	<u>20</u>	Letter Motion from C. Larry Carbo III for Cellular Sales of Knoxville, Inc., Cellular Sales of New York, LLC requesting that the Rule 16 conference, Rule 26 conference, and filing of Case Management Plan be adjourned until the pending motions are decided . (Carbo, Charles) (Entered: 07/19/2012)
07/19/2012	<u>19</u>	MOTION for Limited Admission Pro Hac Vice of Ryan Oliver Cantrell Filing fee \$100, receipt number 0206-2257140. filed by Cellular Sales of Knoxville, Inc., Cellular Sales of New York, LLC. Motions referred to David R. Homer. (Dougherty, Joseph) (Entered: 07/19/2012)
07/16/2012	<u>18</u>	Letter Motion for Jan P. Holick, Jr, Jason Mack, Justin Moffitt, Steven Moffitt, Gurwinder Singh requesting review of objections to Defendant's additional Reply Brief submitted to Judge Mordue . (Dunn, Ronald) (Entered: 07/16/2012)
07/12/2012	<u>17</u>	REPLY to Response to Motion re <u>10</u> MOTION to Dismiss for Lack of Personal Jurisdiction <i>Defendant's Objections to Evidence Submitted by Plaintiffs in Support of Plaintiffs' Brief in Opposition to Defendants' Motion to Dismiss</i> filed by Cellular Sales of Knoxville, Inc.. (Attachments: # <u>1</u> Proposed Order/Judgment)(Carbo, Charles) (Entered: 07/12/2012)
07/12/2012	<u>16</u>	REPLY to Response to Motion re <u>8</u> MOTION to Dismiss for Lack of Subject Matter Jurisdiction <i>Pursuant to Rule 12(b)(1), or, in the Alternative, to Compel Mediation and Stay the Proceedings Pending Mediation</i> filed by Cellular Sales of Knoxville, Inc., Cellular Sales of New York, LLC. (Attachments: # <u>1</u> Exhibit(s) Unpublished Cases)(Carbo, Charles) (Entered: 07/12/2012)
07/12/2012	<u>15</u>	REPLY to Response to Motion re <u>10</u> MOTION to Dismiss for Lack of Personal Jurisdiction filed by Cellular Sales of Knoxville, Inc.. (Attachments: # <u>1</u> Exhibit(s) A, # <u>2</u> Exhibit(s) Unpublished Cases)(Carbo, Charles) (Entered: 07/12/2012)

07/05/2012	<u>14</u>	ORDER granting <u>13</u> Letter Request: extending time to 7/12/12 for defts to file Reply to Response to <u>8</u> and <u>10</u> motions to dismiss. Signed by Judge Norman A. Mordue on 7/5/12. (cbm) (Entered: 07/05/2012)
07/03/2012	<u>13</u>	<i>Unopposed</i> Letter Motion from C. Larry Carbo III for Cellular Sales of Knoxville, Inc., Cellular Sales of New York, LLC requesting Extension for Defendants' Reply to Motion to Dismiss submitted to Judge Norman A. Mordue . (Carbo, Charles) (Entered: 07/03/2012)
06/29/2012	<u>12</u>	MEMORANDUM OF LAW re <u>8</u> Motion to Dismiss/Lack of Subject Matter Jurisdiction,, <u>10</u> Motion to Dismiss/Lack of Personal Jurisdiction, <i>In Opposition to Motions to Dismiss</i> filed by Jan P. Holick, Jr, Jason Mack, Justin Moffitt, Steven Moffitt, Gurwinder Singh. (Attachments: # <u>1</u> Affidavit Holick, # <u>2</u> Affirmation Dunn, # <u>3</u> Exhibit(s) Exhibit EE to Dunn Affirmation)(Dunn, Ronald) (Entered: 06/29/2012)
06/12/2012	<u>11</u>	Exhibits (Case Law) to <u>8</u> Motion to Dismiss for Lack of Subject Matter Jurisdiction <i>Pursuant to Rule 12(b)(1), or, in the Alternative, to Compel Mediation and Stay the Proceedings Pending Mediation</i> by Cellular Sales of Knoxville, Inc., Cellular Sales of New York, LLC <i>Unpublished Case Law 1 of 3</i> (Attachments: # <u>1</u> Exhibit(s) Case Law 2 of 2, # <u>2</u> Exhibit(s) Case Law 2 of 3)(Carbo, Charles) Modified on 6/13/2012 to correctly identify document. (mnm). (Entered: 06/12/2012)
06/08/2012	<u>10</u>	MOTION to Dismiss for Lack of Personal Jurisdiction Motion Hearing set for 7/16/2012 01:00 PM in Albany before Judge Norman A. Mordue Response to Motion due by 6/29/2012 Reply to Response to Motion due by 7/5/2012. filed by Cellular Sales of Knoxville, Inc.. (Attachments: # <u>1</u> Memorandum of Law, # <u>2</u> Exhibit(s) A, # <u>3</u> Exhibit(s) B, # <u>4</u> Exhibit(s) C, # <u>5</u> Exhibit(s) D, # <u>6</u> Exhibit(s) E, # <u>7</u> Exhibit(s) F, # <u>8</u> Exhibit(s) G, # <u>9</u> Exhibit(s) Case Law) (Carbo, Charles) (Entered: 06/08/2012)
06/08/2012	<u>9</u>	NOTICE by Cellular Sales of Knoxville, Inc. <i>of Motion</i> (Carbo, Charles) (Entered: 06/08/2012)
06/08/2012	<u>8</u>	MOTION to Dismiss for Lack of Subject Matter Jurisdiction <i>Pursuant to Rule 12(b)(1), or, in the Alternative, to Compel Mediation and Stay the Proceedings Pending Mediation</i> Motion Hearing set for 7/16/2012 01:00 PM in Albany before Judge Norman A. Mordue Response to Motion due by 6/29/2012 Reply to Response to Motion due by 7/5/2012. filed by Cellular Sales of Knoxville, Inc., Cellular Sales of New York, LLC. (Attachments: # <u>1</u> Memorandum of Law, # <u>2</u> Exhibit(s) A, # <u>3</u> Exhibit(s) B, # <u>4</u> Exhibit(s) C, # <u>5</u> Exhibit(s) D, # <u>6</u> Exhibit(s) E, # <u>7</u> Exhibit(s) F) (Carbo, Charles) (Entered: 06/08/2012)
06/08/2012	<u>7</u>	NOTICE by Cellular Sales of Knoxville, Inc., Cellular Sales of New York, LLC <i>of Motion</i> (Carbo, Charles) (Entered: 06/08/2012)
05/29/2012	<u>6</u>	ORDER granting <u>5</u> Motion for Limited Admission Pro Hac Vice for Cahrles Larry Carbo, III. Signed by Magistrate Judge David R. Homer on 5/25/12. (tab) (Entered: 05/29/2012)
05/25/2012	<u>5</u>	MOTION for Limited Admission Pro Hac Vice of Charles Larry Carbo, III Filing fee \$100, receipt number 0206-2203095. filed by Cellular Sales of

		Knoxville, Inc., Cellular Sales of New York, LLC. Motions referred to David R. Homer. (Dougherty, Joseph) (Entered: 05/25/2012)
04/19/2012	<u>4</u>	WAIVER OF SERVICE Returned Executed by Steven Moffitt, Jan P. Holick, Jr, Justin Moffitt, Gurwinder Singh, Jason Mack. All Defendants. (Jacobs, Daniel) (Entered: 04/19/2012)
04/05/2012	<u>3</u>	G.O. 25 FILING ORDER ISSUED: Initial Conference set for 8/15/2012 10:00 AM in Albany before Magistrate Judge David R. Homer. Civil Case Management Plan due by 8/1/2012. (see) (Entered: 04/05/2012)
04/05/2012	<u>2</u>	Summonses Issued as to Cellular Sales of Knoxville, Inc. and Cellular Sales of New York, LLC. (Attachments: # <u>1</u> Summons for Cellular Sales of New York, LLC)(see) (Entered: 04/05/2012)
04/04/2012	<u>1</u>	COLLECTIVE AND CLASS ACTION COMPLAINT with Jury Demand against Cellular Sales of Knoxville, Inc., and Cellular Sales of New York, LLC (Filing fee \$350 receipt number 0206-2153632) filed by Steven Moffitt, Jan P. Holick, Jr, Justin Moffitt, Gurwinder Singh, and Jason Mack. (Attachments: # <u>1</u> Exhibit(s) A, # <u>2</u> Exhibit(s) B, # <u>3</u> Civil Cover Sheet)(see) (Entered: 04/05/2012)

PACER Service Center			
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